

FILED

U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

FEB 12 2010

DAVID J. MALAND, CLERK

BY
DEPUTY

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SMITH AND NEPHEW, INC.,

Plaintiff,

v.

ARTHREX, INC.,

Defendant.

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CIVIL ACTION NO. 2:07-cv-335-TJW-CE

VERDICT FORM

Question No. 1:

Do you find that S&N has proven by a preponderance of the evidence that Arthrex's RetroButton product directly infringes claim 8 of U.S. Patent No. 5,645,588 ("the '588 patent")?

Answer "yes" or "no." yes

Question No. 2:

Do you find that S&N has proven by a preponderance of the evidence that Arthrex induces the infringement of claim 8 of U.S. Patent No. 5,645,588 ("the '588 patent")?

Answer "yes" or "no." yes

Question No. 3:

Do you find that Arthrex has proven by clear and convincing evidence that claim 8 of U.S. Patent No. 5,645,588 ("the '588 patent") is invalid for any of the following reasons? "Yes" means the claim is invalid, and "No" means the claim is not invalid.

A. Because it was in public use?

Answer "yes" or "no." No

B. Because it was on sale?

Answer "yes" or "no." No

If you have found infringement and validity of claim 8 of the '588 patent (i.e., if you have answered "yes" to Question Nos. 1 or 2 and "no" to all sections of Question No. 3), then answer the following question. Otherwise, do not answer the following question; the jury foreperson should sign and date the Verdict Form and return it to the Security Officer.

Question No. 4:

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate S&N for any infringement you have found?

Answer in dollars, if any, for lost profits.

Answer: \$ 4, 713, 000. 00

Answer in dollars, if any, for a reasonable royalty.

Answer: 0

The jury foreperson should sign and date the Verdict Form and return it to the Security Officer.

Signed this 12th day of February, 2010.